

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE MATTER OF ATMOS ENERGY CORPORATION'S 2008-2009 PURCHASED
GAS ADJUSTMENT AND ACTUAL COST ADJUSTMENT,
RESPONDENT**

**PUBLIC SERVICE COMMISSION,
RESPONDENT
vs.**

**OFFICE OF PUBLIC COUNSEL,
APPELLANT**

DOCKET NUMBER WD74916

DATE: DECEMBER 18, 2012

Appeal from:

Public Service Commission

Appellate Judges:

Division One: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Attorneys:

James M. Fischer, for Respondent Atmos Energy

Jennifer L. Heintz, for Respondent Public Service Commission

Marc D. Poston, for Appellant Office of Public Counsel

MISSOURI APPELLATE COURT OPINION SUMMARY

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PUBLIC SERVICE COMMISSION, RESPONDENT

v.

OFFICE OF PUBLIC COUNSEL, APPELLANT

WD74916

Public Service Commission

Before Division One Judges: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

The Office of Public Counsel ("the OPC") appeals from an order entered by the Missouri Public Service Commission ("the PSC") approving the 2008-2009 actual cost adjustment rates for Atmos Energy Corporation ("Atmos"). The OPC claims that the PSC's order is unlawful and unreasonable in that it violates the Affiliate Transaction Rule, 4 CSR 240-40.016, and is not supported by competent and substantial evidence.

AFFIRMED.

Division One holds:

- (1) In order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that (1) the utility acted imprudently and (2) such imprudence resulted in harm to the utility's ratepayers. This prudence standard applies to affiliate transactions.
- (2) In accordance with the asymmetrical pricing standard, Atmos was required to compensate its affiliate for gas marketing services at the lower of the fair market price or the fully distributed cost of providing that service.
- (3) Although Atmos purchased the natural gas from its affiliate, the PSC properly presumed that Atmos was prudent in its purchase of the natural gas, unless the Staff or the OPC presented evidence that raised serious doubt concerning the prudence of the expenditure.
- (4) As neither the Staff nor the OPC raised any serious concerns that the fully distributed cost would have been lower than the fair market price, the PSC cannot be deemed to have erred in relying upon the presumption that Atmos acted prudently in paying its affiliate the fair market price. In the absence of evidence or argument before the PSC that the fully distributed cost would have been greater than the fair market price, the PSC was free to accept as credible

the evidence presented and to find that the fully distributed price would have been greater than the fair market price.

(5) The PSC did not err in finding that the fair market value of the transactions was established in this case by the competitive bidding process Atmos used to obtain its gas supply and nothing in the record indicated that Atmos tended to favor its affiliate in the bidding process.

(6) The PSC was not required to calculate the fair market price of the natural gas acquired from Atmos's affiliate based on the affiliate's cost of acquiring the natural gas from its upstream suppliers. A utility does not act imprudently simply because its affiliate earns a profit on the transaction.

Opinion by Joseph M. Ellis, Judge

Date: December 18, 2012

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